

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:94-CR-00005-KDB**

UNITED STATES OF AMERICA,

v.

ANTHONY GEORGE ROSS,

Defendant.

ORDER

THIS MATTER is before the Court on Defendant's *pro se* motions docketed as "Pro Se Motion for Restraining Order and Injunction and Show Cause Order," (Doc. No. 64), and "Pro Se Motion to Appoint Counsel Pursuant to Supreme Court Decision *Davis v. US*," (Doc. No. 77). As set forth below, the Court will deny the motions.

I. Motion for Restraining Order & Injunction & Show Cause Order (Doc. No. 64)

In his motion for a restraining order, injunction, and show cause order, Defendant moves the Court to order BOP cease withholding his earnings and removing money from his institutional account. He also argues the Court improperly delegated its authority to establish a schedule of payments to the BOP and requests a "show cause" order to support the Court's restitution ruling. Because Defendant filed his motion in 2006 and much has changed in the fifteen years since Defendant has filed his motion, the Court will deny his motion as moot, but will do so without prejudice so that Defendant may re-file his motion if he still wishes to proceed with his claims.

II. Motion to Appoint Counsel (Doc. No. 77)

Defendant also moves for the appointment of counsel to review the applicability of the decision in *United States v. Davis*, 139 S. Ct. 2319 (2019). (Doc. No. 77). The holding in *Davis* is not

applicable to Defendant's conviction and has no effect on his sentence. 139 S. Ct. at 2320. Title 18 U.S.C. § 924(c)(1)(A) concerns persons in possession of a firearm "during and in relation to any crime of violence or drug trafficking crime." Title 18 U.S.C. § 924(c)(3) defines the term "crime of violence." The crime of violence under which Defendant was convicted, bank robbery and aiding and abetting the same (18 U.S.C. § 2113(a)), "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). Therefore, Defendant was convicted under § 924(c)(3)(A) and not under the provision found unconstitutional in *Davis*, 18 U.S.C. § 924(c)(3)(B). Because Defendant was not convicted under the unconstitutional provision, the *Davis* decision is not applicable, and appointment of counsel is unnecessary.

III. Order

IT IS THEREFORE ORDERED that Defendant's:

- (1) "Motion for Restraining Order and Injunction and Show Cause Order," (Doc. No. 64), is **DENIED** as moot without prejudice to re-file; and
- (2) Motion for appointment of counsel, (Doc. No. 77), is **DENIED**.

SO ORDERED.

Signed: August 9, 2021


Kenneth D. Bell
United States District Judge